

SEP 28 2 56 PM '99

DISPATCHED BY  
 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 99-293
Table of Allotments,	)	RM-9720
FM Broadcast Stations.	)	RM-9721
(Canton and Saranac Lake, New York)	)	

### NOTICE OF PROPOSED RULE MAKING

**Adopted: September 15, 1999**

**Released: September 24, 1999**

Comment Date: November 15, 1999  
 Reply Comment Date: November 30, 1999

By the Chief, Allocations Branch:

1. The Commission has before it two petitions for rule making concerning Channel 269A at Saranac Lake, New York. Radio Vermont Classics, LLC ("Radio Vermont"), licensee of Station WCVT, Channel 269A, Stowe, Vermont, requests the substitution of Channel 227A for vacant and unapplied for Channel 269A at Saranac Lake, and Radio Power, Inc. ("Radio Power") requests the same substitution at Saranac Lake in order to accommodate the substitution of Channel 268C2 for Channel 268A at Canton, New York, and the modification of Station WRCD's license to specify operation on the higher powered channel.

2. Radio Vermont states that the "prior rules" provision of Section 73.213(c) of the Commission's Rules requires a 105 kilometer separation between co-channel Class A channels. However, the transmitter site specified in Station WCVT's outstanding construction permit (BPH-980806IA) is only 104 kilometers distant. Therefore, it requests the substitution of Channel 227A for Channel 269A at Saranac Lake. In addition to enabling Station WCVT to operate with full 6 kW facilities, Radio Vermont states that the Saranac Lake will receive a 6 kW Class A channel in lieu of its present 3 kW channel. Radio Power requests the substitution of Channel 268C2 for its present Class A channel at Canton, and the modification of Station WRCD's license accordingly. Radio Power states that upgrading Station WRCD to a Class C2 would serve the public interest since it could enable the station to provide improved service to the public by increasing its coverage area. Like Radio Vermont, it also states that the substitution of channels at Saranac Lake would improve service to that community by the allotment of a 6 kW Class A channel instead of its present one, which is limited to a power of 3 kW.

3. Channel 268C2 can be allotted to Canton in compliance with the Commission's minimum distance separation requirements with respect to domestic allotments with a site

restriction of 31.8 kilometers (19.8 miles) east of the community.<sup>1</sup> Channel 268C2 at Canton would be short-spaced to Stations CBOF, Channel 271A, Brockville, Ontario, and vacant Channel 270A at Cornwall, Ontario. Channel 227A can be allotted to Saranac Lake in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction.<sup>2</sup> Channel 227A at Saranac Lake would be 30.6 kilometers short-spaced to Station CBM-FM, Channel 228C1, Montreal, Quebec. Both Canton and Saranac Lake are located within 250 kilometers (199 miles) of the U.S.-Canadian border. Therefore, concurrence by the Canadian government in the allotment of these channels, as specially-negotiated short-spaced allotments, must be obtained.

4. For the reasons discussed above, we believe the public interest would be served by considering the substitution of Channel 268C2 for Channel 268A at Canton and the substitution of Channel 227A for Channel 269A at Saranac Lake. In addition, we also propose to modify Station WRCD's license to specify operation on the higher powered channel. In accordance with Section 1.420(g)(3), we will not accept competing expressions of interest in use of Channel 268C2 at Canton or require Radio Power to identify an additional equivalent channel for use by such interested parties.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Canton, New York	268A	268C2
Saranac Lake, New York	269A, 276A, 292C3	227A, 276A or 296A, <sup>3</sup> 292C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

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<sup>1</sup> The coordinates for Channel 268C2 at Canton are 44-35-56 North Latitude and 74-46-24 West Longitude.

<sup>2</sup> The coordinates for Channel 227A at Saranac Lake are 44-19-48 North Latitude and 74-08-00 West Longitude.

<sup>3</sup> The Commission also has before the proposal of Dana Puopolo to allot Channel 276A to Saranac Lake and the counterproposal of Westport Broadcasting to allot Channel 296A in lieu of Channel 276A at Saranac Lake in order to accommodate the substitution of Channel 275A for Channel 273A at Westport, New York. See, MM Docket No. 99-83, 14 FCC Rcd 4098 (1999), and counterproposal thereto.

7. Interested parties may file comments on or before November 15, 1999, and reply comments on or before November 30, 1999, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Nathaniel F. Emmons  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006  
(Counsel to Radio Vermont)

David G. O'Neil  
Rini, Coran & Lancellotta, P.C.  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036-1701  
(Counsel to Radio Power)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation

and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.